THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.1864 of 2007

Date: 20.02.2007

Between:

M/s. Klen & Marshalls Manufacturers & Exporters Ltd.

....Petitioner

And

M/s. Southern Power Distribution Company of Andhra Pradesh Limited, having its own Officer at:D.No.19-3-13(M), Renigunta Road, Tirupati.

....Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.1864 of 2007

O R D E R:

The petitioner entered into a contract in the year 1997 with the A.P.Transco, for installation and maintenance of "capacitor banks" at various sub-stations, to regulate the fluctuations of power supply. The contract provided for payment of bills, based upon the data. The respondent herein stepped into the shoes of A.P.Transco and became a party to the contract. The agreement provided *inter alia* for installation of Electronic Trivector Meter (ETM), for the purpose of reading the fluctuations. The petitioner was required to submit the bills together with the readings for the concerned period. The respondent, in turn, was placed under obligation to pay the bills, after verifying the data, with reference to the log books maintained in the respective sub-stations.

The petitioner states that it became incompatible for it, to install ETM at some of the sub-stations. According to

it, the bills were submitted from time to time, on the basis of the data available with the sub-stations, and they were released. It was only on 16.02.2006, the respondent pointed out the lapse on the part of the petitioner, in its installing the meter. Thereafter, while releasing the bills, through its letter, dated 16.02.2006, the respondent levied penalty of 10% on the bills, for the lapse of the petitioner, in submitting the readings through ETM. The petitioner made representations narrating the circumstances under it. The respondent also waived the condition. Subsequently, the penalty was enhanced to 20%. Ultimately, through its letter, dated 05.01.2007, the respondent refused to release the bills, unless they are accompanied by the readings through ETM. The said letter is challenged in this writ petition.

Petitioner contends that the respondent itself waived the condition, as to submission of readings, almost for three and half years and thereafter, levied penalty of 10%. It is stated that the contract itself is coming to an end by March 2007 and it would be difficult and impossible for it, to install the ETM, at this stage.

Respondent filed counter affidavit. The allegations made by the petitioner are denied. It is stated that imposition of penalty of 10% was a one time measure and

the condition was never waived.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

The contract of the petitioner with the predecessor of the respondent commenced in the year 1997. The respondent came into existence in the year 2000. The installation of the capacitor banks was completed by April 2001. Even since then, the bills were being released to the petitioner, though the ETMs were not installed at some of the sub-stations.

The agreement does contain a Clause to the effect that installation of ETMs is mandatory. This Court cannot compel the respondent to waive the condition. However, the respondent itself has chosen to waive the condition, almost for three and half years. It went on making payments, without insisting on submission of the readings through ETMs. The basis was the data in the log books maintained by the sub-stations. The lapse on the part of the petitioner was taken note of in February 2006. However, the lapse was almost compounded, by levying penalty of 10% on the bills. Though the petitioner made representations feeling aggrieved by the same, it ultimately reconciled with the course of action chosen by the respondent.

The contract is coming to an end by March 2007. The respondent communicated its decision through the impugned letter in the Month of January 2007, stating that unless the bills are accompanied by the readings through ETM, they would not be released. If this action is tested on the touchstone of reasonability, it becomes clearly evident that this approach of the respondent, particularly having regard to the timing of which, the impugned letter was issued, is unreasonable and causes immense hardship to the petitioner. Though not as a measure of application of principle of estoppel, it clearly emerges that but for the waiver exhibited by the respondent, the petitioner would have taken adequate steps, at the relevant point of time. The bills were submitted at a time, when the ETMs were not installed. Even if they are to be installed at this stage, they cannot record the fluctuations of the previous months. The installation, at this stage, would be hardly of any use, since the contract itself is coming to an end. The respondent had already penalized the petitioner, by imposing penalty of 10%.

Hence, the Writ Petition is allowed and the impugned order is set aside. It is directed that the respondent shall release the payments to the petitioner, after verifying the required data in the log books

maintained at the respective sub-stations, by imposing penalty of 10%. There shall be no order as to costs.

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20.02.2007

Note: Issue C.C. in three days

(B/o)

JSU